

1219-0041

2020

Program to Prevent Smoking in Hazardous Areas

**Supporting Statement for
Paperwork Reduction Act Submissions**

OMB Control Number: 1219 - 0041

OMB Information Collection Title: Program to Prevent Smoking in Hazardous Areas of Underground Coal Mines

Form Number(s): None

Authority: 30 CFR 75.1702 and 75.1702-1

General Instructions

A Supporting Statement, including the text of the notice to the public required by 5 CFR 1320.5(a)(i)(iv) and its actual or estimated date of publication in the Federal Register, must accompany each request for approval of a collection of information. The Supporting Statement must be prepared in the format described below, and must contain the information specified in Section A below. If an item is not applicable, provide a brief explanation. When the question "Does this ICR contain surveys, censuses or employ statistical methods" is checked "Yes", Section B of the Supporting Statement must be completed. OMB reserves the right to require the submission of additional information with respect to any request for approval.

Specific Instructions

A. JUSTIFICATION

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813(h), authorizes the Mine Safety and Health Administration (MSHA) to

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collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811, authorizes the Secretary of Labor to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal and metal and nonmetal mines.

Section 317(c) Mine Act, 30 U.S.C. 877(c), and 30 CFR 75.1702 prohibit persons from smoking or carrying smoking materials underground or in places where there is a fire or explosion hazard. Under the Mine Act and section 75.1702, coal mine operators are required to develop programs to prevent persons from carrying smoking materials, matches, or lighters underground and to prevent smoking in hazardous areas, such as in or around oil houses, explosives magazines, or other areas where such practice may cause a fire or explosion.

Section 75.1702-1 requires a mine operator to submit a smoking prevention program to MSHA for approval. This information collection requirement helps to ensure that a fire or explosion hazard does not occur.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

MSHA uses the information to determine a mine operator's compliance with the standard to institute a smoking prevention program that ensures persons entering the underground area of the mine do not carry smoking materials, matches, or lighters.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

No improved information technology has been identified that would reduce the burden. The smoking prevention program is a written description prepared for and approved by the MSHA District Manager. The smoking prevention program describes the frequency, locations, and methods of searches conducted to prevent the intentional or inadvertent carrying of smoking materials into an underground coal mine.

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The program can be prepared using word processing programs and submitted via email where the mine operator has the capability of affixing transmittable authorization signatures, or where the email or facsimile is followed by a signed hard copy. Email submissions occur about 70 percent of the time.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

There is no similar or duplicate information. MSHA approves a smoking prevention program on a mine-by-mine basis. Where State agencies require a smoking prevention program, MSHA will accept the same program if the program satisfies the requirements of section 75.1702.

5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

This information does not have a significant impact on small businesses or other small entities.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

MSHA would not be able to enforce this standard if MSHA did not collect this information.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- **requiring respondents to report information to the agency more often than quarterly;**
- **requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
- **requiring respondents to submit more than an original and two copies of any document;**
- **requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;**

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- **in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
- **requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**
- **that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**
- **requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information' confidentiality to the extent permitted by law.**

An approved smoking prevention program is required for all underground coal mines. A smoking prevention program must be submitted for approval in accordance with section 75.1721(b)(9) prior to the opening of new underground coal mines, or the reopening and reactivating of abandoned or deactivated coal mines. Once submitted and approved, a revised smoking prevention program is only required where the mine ownership changes or the smoking prevention program proves inadequate to prevent miners from bringing smoking articles underground. This collection of information is otherwise consistent with the guidelines in 5 CFR 1320.5.

8. If applicable, provide a copy and identify the data and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB.

MSHA published a 60-day Federal Register notice on October 31st, 2020 (84 FR 58411). No public comments were received.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

MSHA does not provide payments or gifts to respondents.

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10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

There is no assurance of confidentiality provided to respondents.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

There are no questions of a sensitive nature.

12. Provide estimates of the hour burden of the collection of information. The statement should:

- **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**
- **If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens.**
- **Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 13.**

Hour Burden

MSHA maintains a database that records the submission and approval of

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smoking prevention programs required under sections 75.1702 and 75.1702-1. A smoking prevention program remains in effect for the life of the mine; therefore, the number of annual responses is limited to programs developed for new mines or mines changing ownership. In 2018, there were 9 new smoking prevention programs approved by MSHA under this standard. MSHA estimates that it takes a mine operator approximately 30 minutes (0.5 hour) to develop a smoking prevention program.

$$9 \text{ plans} \times 0.5 \text{ hour per program} = 5 \text{ hours}$$

Hour Burden Cost

MSHA estimates that a mine foreman¹ prepares the program at a wage of \$61.48 per hour².

$$5 \text{ hours} \times \$61.48 \text{ per hour} = \$307$$

13. Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden already reflected on the burden worksheet).

- **The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life); and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.**

1 For all wage rates, MSHA uses the relevant precision throughout the calculation to avoid compound rounding errors and rounds at the final rate value. Displayed intermediate calculation values are presented to explain the calculation and are representative but the final rate value reflects the correct rounding and final estimate.

2 For the coal mining supervisor hourly wage rates, MSHA used the employment weighted mean hourly wage from the OES May 2018 survey (www.bls.gov/oes), for 4 first-line supervisor occupations from Standard Occupational Classification (SOC) major group codes 47, 49, 51, and 53 and industry code 212100 of the North American Industry Classification System (NAICS) codes historically represented in the approval requests. The weighted mean was adjusted for benefits and inflation to obtain a fully loaded rate of \$61.48 (\$40.14 x 1.49 x 1.028) for a coal mining supervisor.

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- **If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.**
- **Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.**

MSHA estimates that there are no additional costs associated with submission of a smoking prevention program. MSHA's experience is that a smoking prevention program is relatively straightforward, requiring minimal effort, and a respondent typically submits the plan along with other mandatory plans; therefore, mailing or processing costs are not incurred by the mine operator.

14. Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 in a single table.

MSHA's records show that in 2018 it received approximately 9 new smoking prevention programs. MSHA estimates a GS-12 earning \$56.90 per hour³ needs about 30 minutes (0.5 hours) to review and to approve a smoking prevention program.

³ Hourly wage rate developed from Office of Personnel Management (OPM) September 2018 *FedScope* employment cube, <http://www.fedscope.opm.gov/>. Average annual salary of \$84,882 obtained from DOL-MSHA employees. Data search qualifiers are: agency = DLMS, occupation = 1822, Salary Grade = GS-12. In order to include the cost of benefits, this annual average salary was multiplied by a benefits scaler of 1.399 computed from MSHA's 2020 budget submission. The final hourly wage rate was derived by dividing the adjusted annual average salary by 2,087 hours [$\$56.90 = (\$84,882 \times 1.399) \div 2,087$ annual hours]

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9 programs x 0.5 hour x \$56.90 per hour = \$284

15. Explain the reasons for any program changes or adjustments reported on the burden worksheet.

Adjustments are as follows: There was a decrease in the total number of programs submitted (17 to 9) resulting in a decrease of 4 burden hours (from 9 to 5). A corresponding decrease occurred in the number of respondents (17 to 9) and responses (17 to 9). Burden costs remain the same at zero.

16. For collections of information whose results will be published, outline plans for tabulation, and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

MSHA does not intend to publish the results of this information collection.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

This collection does not seek approval to not display the expiration date for OMB approval. There are no forms associated with this information collection on which to display the OMB number and expiration date.

18. Explain each exception to the topics of the certification statement identified in "Certification for Paperwork Reduction Act Submissions."

There are no certification exceptions identified with this information collection.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

There is no statistical methodology involved in this collection.